

School Board

Communications To and From the Board ¹

The School Board welcomes communications from staff members, parents/guardians, students, and community members. Individuals may submit questions or communications for the School Board's consideration to the Superintendent or may use the electronic link to the Board's email address(es) posted on the District's website.² The Superintendent or designee shall: ³

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ State law controls portions of this policy but does not require a policy on any topic covered.

An alternative to the opening sentence follows: "The School Board welcomes communications from the school community."

² School districts that maintain an Internet website, other than a social media or social networking website, must post a "mechanism, such as a uniform single email address, for members of the public to electronically communicate with elected officials." 50 ILCS 205/20. The sample policy's default language may be used even when the district provides each board member with an individual email address. The language permits every board member to read all emails sent to the electronic link. This aligns with IASB's *Foundational Principles of Effective Governance* because all members receive the same information and communications as illustrated below:

- When the district provides individual email addresses to board members, it can post a hyperlink on the district home page to an email address that will forward the communication **to all seven** board members' email addresses simultaneously.
- When the district does **not** provide individual email addresses to board members, it can post a hyperlink on the district's home page to one email address that every board member may access.

Other ways to comply should ensure that all board members have equal access to communications. For example, posting a hyperlink on the district home page **to a list of** individual board member email addresses would **not** ensure that all board members have equal access to questions or communications for the board's consideration.

Whenever a district provides email addresses to individual board members, all emails sent to individual email addresses are subject to disclosure under the Freedom of Information Act (FOIA). *City of Champaign v. Madigan*, 992 N.E.2d 629 (Ill.App.4th 2013). Public bodies must also conduct a reasonable search for public records responsive to a FOIA request, which includes searching public employees' communications on personal devices or accounts for records pertaining to the transaction of public business. See PAO 16-6. Consult the board attorney when searching board members' personal email addresses and/or devices may be necessary to respond to a FOIA request.

If the district does not maintain an Internet website, delete all text in the first paragraph after the word *Superintendent* and delete the entire second and third paragraphs, i.e.:

~~or may use the electronic link to the Board's email address(es) posted on the District's website.~~

~~The Superintendent or designee shall:~~

- ~~1. Ensure that the home page for the District's website contains an active electronic link to the email address(es) for the School Board, and~~
- ~~2. During the Board's regular meetings, report for the Board's consideration all questions or communications submitted through the active electronic link along with the status of the District's response in the Board meeting packet.~~

³ Directive #1 to the superintendent restates the statutory requirement to post a hyperlink to the email address on the district's home page. 50 ILCS 205/20. Directive #2 is optional and adds a step to increase efficient responses to communications concerning the operation or management of the district or a school. Adding this text allows a board to (1) monitor its compliance with 50 ILCS 205/20, (2) ensure that all board members stay informed of all questions and communications to the board, (3) align with IASB's *Foundational Principles of Effective Governance*, and (4) mirror a School Code requirement (105 ILCS 5/10-16) for the superintendent to report any FOIA requests during the board's regular meetings along with the status of the district's response.

Before adoption of this text, each board may want to have a conversation with the superintendent about the difference between "staff work questions or communications" that do not need to be submitted to the board and "questions or communications submitted for the school board's consideration" that do need to be submitted to the board.

For districts that maintain an Internet website but do not wish to adopt Directive #2, delete Directive #2 and amend the policy as follows:

1. Ensure that the home page for the District’s website contains an active electronic link to the email address(es) for the School Board, and
2. During the Board’s regular meetings, report for the Board’s consideration all questions or communications submitted through the active electronic link along with the status of the District’s response in the Board meeting packet.

If contacted individually, Board members will refer the person to the appropriate level of authority, except in unusual situations. Board members’ questions or communications to staff or about programs will be channeled through the Superintendent’s office. Board members will not take individual action that might compromise the Board or District. There is no expectation of privacy for any communication sent to the Board or its members, whether sent by letter, email, or other means.

Board Member Use of Electronic Communications ⁴

For purposes of this section, *electronic communications* includes, without limitation, electronic mail, electronic chat, instant messaging, texting, and any form of social networking.⁵ Electronic communications among a majority or more of a Board-quorum shall not be used for the purpose of discussing District business. Electronic communications among Board members shall be limited to: ⁶ (1) disseminating information, and (2) messages not involving deliberation, debate, or decision-making. The following list contains examples of permissible electronic communications:

- Agenda item suggestions
- Reminders regarding meeting times, dates, and places
- Board meeting agendas or information concerning agenda items
- Individual emails to community members, subject to the other limitations in this policy

In accordance with the Open Meetings Act and the Oath of Office taken by Board members, individual Board members will not (a) reply to an email on behalf of the entire Board, or (b) engage

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The Superintendent or designee shall ensure that the home page for the District’s website contains an active electronic link to the email address(es) for the School Board.

A public body is not required to reply to communications. Likewise, the FOIA does not require questions to be answered. Chicago Tribune Co. v. Dept. of Financial & Professional Reg., 8 N.E.3d 11 (Ill.App.4th, 2014). For more information about districts governed by a board of school directors, see f/n 6 of policy 2:220, *School Board Meeting Procedure*.

⁴ With some exceptions, OMA requires that a board conduct its deliberations and business during meetings that the public may attend. A meeting means “any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business.” 5 ILCS 120/1.02. Thus, any *electronic communication* discussing district business that circulates among a majority of a quorum of the board may qualify as a meeting for purposes of the OMA and may be illegal. A violation of OMA is a Class C misdemeanor. 5 ILCS 120/4.

The Local Records Act (50 ILCS 205/) governs retention of district records; its definition of *public record* is more narrow than the definition in FOIA. These communications must be retained only when they contain: (1) evidence of the district’s organization, function, policies, procedures, or activities, or (2) informational data appropriate for preservation. While this is a slippery slope without definitive parameters, electronic communication among board members that are permissible under this policy may generally be deleted; consult the board attorney for a more thorough analysis and a legal opinion.

⁵ The examples of *electronic communications* are optional and may be amended.

⁶ Complying with these restrictions will help avoid an OMA violation.

in the discussion of District business through electronic communications with a majority of a Board-quorum. ⁷

LEGAL REF.: 5 ILCS 120/, Open Meetings Act.
50 ILCS 205/20, Local Records Act.

CROSS REF.: 2:220 (School Board Meeting Procedure), 3:30 (Chain of Command), 8:110
(Public Suggestions and Concerns)

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⁷ The oath of office in 105 ILCS 5/10-16.5, amended by P.A. 100-1055, requires board members to swear or affirm that they “shall recognize that a board member has no legal authority as an individual and that decisions can only be made by a majority vote at a public board meeting.” Deliberations of the board must be conducted openly; a meeting occurs whenever a majority of a quorum discusses public business; meetings must occur at a properly noticed board meeting that is open to the public. 5 ILCS 120/1, 1.02, and 2. For additional information, see f/ns above and 2:140-E, *Guidance for Board Member Communications, Including Email Use*.

School Board

Exhibit - Guidance for Board Member Communications, Including Email Use ¹

The Open Meetings Act (OMA) requires the School Board to discuss District business only at a properly noticed Board meeting. 5 ILCS 120/. Other than during a Board meeting, a majority or more of a Board-quorum may not engage in contemporaneous interactive communication, whether in person or electronically, to discuss District business. This *Guidance* assumes a Board has seven members and covers issues arising from Board policy 2:140, *Communications To and From the Board*.

Communications Between or Among Board Members and/or the Superintendent Outside of a Properly Noticed Board Meeting

1. The Superintendent or designee is permitted to email information to Board members. For example, the Superintendent may email Board meeting agendas and supporting information to Board members. When responding to a single Board member's request, the Superintendent should copy all other Board members and include a *do not reply/forward* alert to the group, such as: **"BOARD MEMBER ALERT: This email is in response to a request. Do not reply or forward to the group but only to the sender."**
2. Board members are permitted to discuss any matter except District business with each other, whether in person or by telephone or email, regardless of the number of members participating in the discussion. For example, they may discuss league sports, work, or current events.
3. Board members are permitted to provide information to each other, whether in person or by telephone or email, that is non-deliberative and non-substantive. Examples of this type of communication include scheduling meetings and confirming receipt of information.
4. A Board member is not permitted to discuss District business with more than one other Board member at a time, whether in person or by telephone or email. Stated another way, a Board member may discuss District business in person or by telephone or email with only one other Board member at a time. However, a Board member should not facilitate interactive communication by discussing District business in a series of visits with, or telephone calls or emails to, Board members individually.
5. A Board member should include a *do not reply/forward* alert when emailing a message concerning District business to more than one other Board member. The following is an example of such an alert: **"BOARD MEMBER ALERT: This email is not for interactive discussion purposes. The recipient should not reply to it or forward it to any other individual."**
6. Board members should not forward email received from another Board member.

The footnotes should be removed before the material is used.

¹ This exhibit is not legal advice. Use it after a discussion with the board attorney. To prevent over-loading the District's servers with email messages, the District can annually seek authority from the Local Records Commission to dispose of "all District-wide electronic correspondence" for a year at a time. These types of records are generally not needed in the transaction of current District business and they generally do not have sufficient administrative, legal, or fiscal value to warrant preservation. The board attorney should also be consulted on all legal issues involving the Open Meetings Act (OMA) and record retention.

When Must the Electronic Communications Sent or Received by Individual Board Members Be Disclosed Pursuant to a Freedom of Information Act (FOIA) Request?

An electronic communication must be disclosed if it is a *public record* as defined by FOIA, unless a specific exemption applies. A public record is any recorded information “pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.” 5 ILCS 140/2. Email sent or received by an individual Board member may be, depending on the content and circumstances, subject to disclosure as a *public record* (unless a FOIA exemption is applicable).

If a Board member uses a District-provided device or email address to discuss public business, the email is subject to disclosure under FOIA, barring an applicable exemption. If a Board member uses a private device and email address, the communication is subject to FOIA if it satisfies this test:

First, the communication pertains to the transaction of public business, and

Second, the communication was: (1) prepared by a public body, (2) prepared for a public body, (3) used by a public body, (4) received by a public body, (5) possessed by a public body, and/or (6) controlled by a public body.

This test is from the appellate court decision in City of Champaign v. Madigan, 992 N.E.2d 629 (Ill.App.4th 2013).

The following *examples* describe FOIA’s treatment of electronic communications:

1. If an electronic communication does not pertain to public business, it is not a public record and is not subject to a FOIA request.
2. An electronic communication pertaining to public business that is:
 - a. Sent and/or received by an individual Board member using a personal electronic device and personal email address while he or she is at home or work **would not be a public record**. Individual Board members, alone, cannot conduct school District business. As stated earlier, emails among a majority or more of a Board-quorum violate OMA and, thus, are subject to disclosure during proceedings to enforce OMA.
 - b. Sent and/or received by an individual Board member on a District-issued device or District-issued email address **will be a public record** and subject to FOIA. The electronic communication is under the control of the District.
 - c. Received by an individual Board member on a personal electronic device and then forwarded by the Board member to a District-owned device or server **will be a public record** and subject to FOIA. The electronic communication is under the control of the District.
 - d. Received by an individual Board member using a personal electronic device and personal email address, and then forwarded by the Board member to enough members to constitute a majority or more of a Board-quorum **will be a public record** and subject to FOIA. The electronic communication is in the District’s possession.
 - e. Either sent to or from a Board member’s personal electronic device during a Board meeting **will be a public record** and subject to FOIA. The electronic communication is in the District’s possession because Board members were functioning collectively as a public body.

The District’s Freedom of Information Officer and/or Board Attorney will help determine when a specific communication must be disclosed pursuant to a FOIA request.

When Must Electronic Communications Be Retained?

Email that qualifies under FOIA as a *public record* will need to be stored pursuant to the Local Records Act (LRA), only if it is evidence of the District's organization, function, policies, procedures, or activities or contains informational data appropriate for preservation. 50 ILCS 205/. An example is any email from a Board officer concerning a decision made in his or her capacity as an officer. If a Board member uses his or her personal email, he or she must copy this type of email to the appropriate District office where it will be stored. If made available, Board members should use their email accounts provided by the District, and the District will automatically store the official record messages. The District will delete these official record messages as provided in an applicable, approved **retention schedule**. Of course, email pertaining to public business that is sent or received by a Board Member using a District-issued device or email address will be subject to FOIA, even if the email does not need to be retained under the LRA.

Important: Do not destroy any email concerning a topic that is being litigated without obtaining the Board attorney's direction. In federal lawsuits, there is an automatic discovery of virtually all types of electronically created or stored data that might be relevant. Attorneys will generally notify their clients at the beginning of a legal proceeding not to destroy any electronic records that might be relevant. This is referred to as a *litigation hold*. For more discussion of a litigation hold, see 2:250-AP2, *Protocols for Record Preservation and Development of Retention Schedules*. In addition, any person who knowingly with the intent to defraud any party destroys, removes, or conceals any public record commits a Class 4 felony. 50 ILCS 205/4.